



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Doc. No. AMS-SC-19-0048; SC19-922-1 FR]

**Marketing Order Regulating the Handling of Apricots Grown
in Designated Counties in Washington; Increased Assessment
Rate**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements a recommendation from the Washington Apricot Marketing Committee (Committee) to increase the assessment rate established for the 2019-2020 and subsequent fiscal periods. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: Dale Novotny, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or Email:

dalej.novotny@usda.gov or GaryD.Olson@usda.gov. Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 922, as amended (7 CFR part 922), regulating the handling of apricots grown in designated counties of Washington. Part 922 (referred to as the "Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Committee locally administers the Order and is comprised of apricot growers and handlers operating within the area of production.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This final rule falls within a category of regulatory

actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' " (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, Washington apricot handlers are subject to assessments. Funds to administer the Order are derived from such assessments. The assessment rate will be applicable to all assessable Washington apricots for the 2019-2020 fiscal period, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to a marketing order may file with USDA a petition stating that the order, any provision of the marketing order, or any

obligation imposed in connection with the marketing order is not in accordance with law and request a modification of the marketing order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Committee members are familiar with the Committee's needs and with the costs of goods and services in their local area and can formulate an appropriate budget and assessment rate. The Committee discussed the assessment rate in a public meeting where all directly affected persons have an opportunity to participate and provide input.

This final rule increases the assessment rate from \$1.00 to \$2.86 per ton of Washington apricots handled for the 2019-2020 and subsequent fiscal periods. The higher rate is necessary to fund the Committee's 2019-2020 fiscal period budgeted expenditures. Based on input received from growers at an annual meeting, the 2019 crop of Washington apricots is expected to be unusually low because of the effects of late season frost on budding orchard trees. The Committee believes that increasing the assessment rate will allow the Committee to fully fund its 2019-2020 budgeted expenses.

The Committee held a well-publicized meeting May 8, 2019, at which all interested parties were encouraged to participate in the discussions. However, the Order's quorum requirement was not met and the Committee was not able to conduct official business. The following day, the Committee voted by email and unanimously recommended 2019-2020 fiscal period expenditures of \$8,325 and an assessment rate of \$2.86 per ton of apricots handled. The 2019-2020 fiscal period budgeted expenses are unchanged from the prior year. The assessment rate of \$2.86 is \$1.86 higher than the \$1.00 per ton rate currently in effect.

The Committee recommended the assessment rate increase due to the anticipated reduced production level in 2019 resulting from a late season frost that damaged the crop. The 2018 crop was also smaller than the Committee had anticipated by 2,036 tons, which resulted in the Committee using more funds from its financial reserve than expected.

The major expenditures recommended by the Committee for the 2019-2020 fiscal period include \$4,000 for program management contract services provided by the Washington State Fruit Commission, \$2,600 for annual audit and legal expenses, \$1,300 for Committee travel and meeting expenses, and \$425 for administrative expenses. In comparison, the aforementioned expense categories budgeted for the 2018-2019 fiscal period were the same amounts.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected apricot sales, and the amount of funds available in the authorized reserve. Expected income derived from handler assessments of \$9,438 (3,300 tons of apricots at \$2.86 per ton), would be adequate to cover budgeted expenses of \$8,325 and contribute \$1,113 to the Committee's financial reserve. Funds in the reserve (estimated to be \$7,211 at

the beginning of the 2019-2020 fiscal period) would be kept within the maximum permitted by § 922.142(a) by not exceeding the expenses of approximately one fiscal period.

The assessment rate established in this final rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

The Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's budget for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 315 growers and 13 handlers of apricots in the regulated production area subject to regulation under the Order. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$30,000,000, and small agricultural producers are defined as those having annual receipts of less than \$1,000,000 (13 CFR 121.201).

According to data from USDA's Market News Service, the 2018 season average f.o.b. price for Washington apricots

was approximately \$25.07 per carton. The Committee reported that the industry shipped 3,964 tons for the season, which equals approximately 528,533 cartons (3,964 tons at an approximate net weight of 15 pounds per carton). Using the number of handlers, and assuming a normal distribution, most handlers would have average annual receipts of less than \$30,000,000 (\$25.07 times 528,533 equals \$13,250,331 divided by 13 handlers equals \$1,019,256 per handler).

In addition, based on USDA National Agricultural Statistics Service data, the weighted average grower price for the 2018 season was \$1,330 per ton of apricots. Based on grower price, shipment data, and the total number of Washington apricot growers, and assuming a normal distribution, the average annual grower revenue is below \$1,000,000 (\$1,330 times 3,964 tons equals \$5,272,120 divided by 315 growers equals \$16,737 per grower). Thus, most growers and handlers of Washington apricots may be classified as small entities.

This final rule increases the assessment rate collected from handlers for the 2019-2020 and subsequent fiscal periods from \$1.00 to \$2.86 per ton of Washington

apricots handled. The Committee unanimously recommended 2019-2020 fiscal period expenditures of \$8,325 and the \$2.86 per ton assessment rate. The assessment rate of \$2.86 is \$1.86 higher than the rate for the 2018-2019 fiscal period.

The Committee estimates that the industry will handle 3,300 tons of fresh, Washington apricots during the 2019-2020 fiscal period. Thus, the \$2.86 per ton rate should provide \$9,438 in assessment income. Income derived from handler assessments would be adequate to cover all budgeted expenses. In addition, the Committee anticipates adding \$1,113 to its monetary reserve in the 2019-2020 fiscal period.

The major expenditures recommended by the Committee for the 2019-2020 fiscal period include \$4,000 for program management contract services provided by the Washington State Fruit Commission, \$2,600 for annual audit and legal expenses, \$1,300 for Committee travel and meeting expenses, and \$435 for administrative expenses. Those budgeted expenditures are unchanged from the previous fiscal period.

The higher assessment rate is necessary to cover all the Committee's 2019-2020 fiscal period budgeted

expenditures and replenish its financial reserve. The Committee has had to draw from its monetary reserve to partially fund program activities during previous fiscal periods.

Prior to arriving at this budget and assessment rate, the Committee considered maintaining the current assessment rate of \$1.00 per ton. However, after grower input and discussions at its May 8, 2019, meeting, the anticipated crop was downgraded from 5,500 to 3,300 tons. This amount of production at the current assessment level of \$1.00 per ton would not have generated enough revenue to fund the Committee's operations for the 2019-2020 fiscal period and allow it to maintain an adequate financial reserve. Based on estimated shipments, the recommended assessment rate of \$2.86 per ton of apricots should provide \$9,438 in assessment income. The Committee determined assessment revenue will be adequate to cover all budgeted expenditures for the 2019-2020 fiscal period and allow it to make a small contribution to its financial reserve. Reserve funds will be kept within the amount authorized in the Order.

A review of historical data and preliminary information pertaining to the upcoming fiscal period

indicates that the average grower price for the 2019-2020 season should be approximately \$800-\$1,600 per ton of Washington apricots. Therefore, the estimated assessment revenue for the 2019-2020 marketing year as a percentage of total grower revenue will be between 0.18 and 0.36 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs would be offset by the benefits derived by the operation of the Order.

The Committee's meetings are widely publicized throughout the Washington apricot industry. All interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 8, 2019, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons were invited to submit comments on this rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the OMB and assigned OMB No. 0581-0189, Fruit Crops. No changes in those requirements will be necessary because of this action. Should any changes become necessary, AMS will submit them to OMB for approval.

This final rule will not impose any additional reporting or recordkeeping requirements on either small or large Washington apricot handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the *Federal Register* on October 2, 2019 (84 FR 52384). Copies of the proposed rule were provided to all Washington apricot handlers. The proposal was also made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending November 1, 2019, was provided for interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 922 is amended as follows:

PART 922 - APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for part 922 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 922.235 is revised to read as follows:

§ 922.235 Assessment rate.

On and after April 1, 2019, an assessment rate of \$2.86 per ton is established for Washington apricots handled in the production area.

Dated: December 20, 2019.

Bruce Summers,

Administrator,

Agricultural Marketing Service.

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